



DIGEST OF HB 1397 (Updated February 10, 2009 7:17 pm - DI 92)

Citations Affected: IC 6-3.1.

Synopsis: Buy American tax credit. Provides the buy American investment tax credit for individuals and small businesses who purchase construction equipment, farm tractors, motor vehicles, recreational vehicles, tractors, or truck campers that are certified to have been made in America. Requires the dealer selling the property to make the certification on a form prescribed by the Indiana economic development corporation. Requires the form to be signed under penalty of perjury. Specifies the criteria for determining whether the property may be certified.

Effective: July 1, 2009.

## Niezgodski, Barnes

January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.
February 5, 2009, amended, reported — Do Pass.
February 10, 2009, read second time, amended, ordered engrossed.





First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in this style type or this style type reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## **HOUSE BILL No. 1397**

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 6-3.1-1-3, AS AMENDED BY P.L.223-2007.
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2	SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3	JULY 1, 2009]: Sec. 3. A taxpayer (as defined in the following laws).
4	pass through entity (as defined in the following laws), or shareholder,
5	partner, or member of a pass through entity may not be granted more
6	than one (1) tax credit under the following laws for the same project:

- (1) IC 6-3.1-10 (enterprise zone investment cost credit).
- (2) IC 6-3.1-11 (industrial recovery tax credit).
- (3) IC 6-3.1-11.5 (military base recovery tax credit).
- 10 (4) IC 6-3.1-11.6 (military base investment cost credit).
- (5) IC 6-3.1-13.5 (capital investment tax credit). 11
- 12 (6) IC 6-3.1-19 (community revitalization enhancement district 13 tax credit).
- 14 (7) IC 6-3.1-24 (venture capital investment tax credit).
- 15 (8) IC 6-3.1-26 (Hoosier business investment tax credit).
- 16 (9) IC 6-3.1-31.9 (Hoosier alternative fuel vehicle manufacturer 17

tax credit).



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1	(10) IC 6-3.1-33 (buy American investment tax credit).	
2	If a taxpayer, pass through entity, or shareholder, partner, or member	
3	of a pass through entity has been granted more than one (1) tax credit	
4	for the same project, the taxpayer, pass through entity, or shareholder,	
5	partner, or member of a pass through entity must elect to apply only	
6	one (1) of the tax credits in the manner and form prescribed by the	
7	department.	
8	SECTION 2. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE	
9	AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE	
10	JULY 1, 2009]:	
11	Chapter 33. Buy American Investment Tax Credit	
12	Sec. 1. This chapter applies to taxable years beginning after	
13	December 31, 2009.	
14	Sec. 2. As used in this chapter, "all terrain vehicle" has the	
15	meaning set forth in IC 15-12-3-2.	
16	Sec. 3. As used in this chapter, "America" means one (1) or	
17	more of the states comprising the United States of America or the	
18	District of Columbia.	
19	Sec. 4. (a) As used in this chapter, "construction equipment"	
20	means a motorized, self-propelled machine designed to scrape,	
21	push, move, or load dirt, sand, gravel, rock, or other materials. The	
22	term includes the following:	
23	(1) Articulated dump trucks.	
24	(2) Backhoe loaders.	-
25	(3) Bulldozers.	
26	(4) Excavators.	
27	(5) Landscape loaders.	
28	(6) Loaders.	V
29	(7) Motor graders.	
30	(8) Scraper tractors.	
31	(9) Skid steers.	
32	(b) The term does not include an all terrain vehicle.	
33	Sec. 5. As used in this chapter, "corporation" refers to the	
34	Indiana economic development corporation established by	
35	IC 5-28-3-1.	
36	Sec. 5.5. As used in this chapter, "dealer" means a person who:	
37	(1) is engaged in the business of buying, selling, leasing, or	
38	exchanging property described in subdivision (2); and	
39	(2) sells, leases, or advertises the sale or lease of more than	
40	four (4):	
41	(A) motor vehicles;	
42	(B) pieces of construction equipment;	



1	(C) farm tractors;	
2	(D) tractors;	
3	(E) recreational vehicles; or	
4	(F) truck campers;	
5	within a twelve (12) month period.	
6	Sec. 6. As used in this chapter, "department" refers to the	
7	department of state revenue.	
8	Sec. 7. As used in this chapter, "farm tractor" has the meaning	
9	set forth in IC 9-13-2-56.	
10	Sec. 8. As used in this chapter, "motor vehicle" has the meaning	
11	set forth in IC 9-13-2-105(a).	
12	Sec. 9. As used in this chapter, "pass through entity" means a:	
13	(1) corporation that is exempt from the adjusted gross income	
14	tax under IC 6-3-2-2.8(2);	
15	(2) partnership;	
16	(3) trust;	
17	(4) limited liability company; or	
18	(5) limited liability partnership.	
19	Sec. 10. (a) As used in this chapter, "qualified investment"	
20	means the purchase of new construction equipment, a new farm	
21	tractor, a new motor vehicle, a new tractor, a new recreational	
22	vehicle, or a new truck camper that:	
23	(1) has never been placed into service or used by another	
24	person; and	
25	(2) is certified by the dealer selling the property to have been	
26	made in America.	
27	(b) The term does not include the purchase of any property	
28	described in subsection (a) for the purpose of resale.	V
29	Sec. 11. As used in this chapter, "qualified taxpayer" means:	
30	(1) an individual who resides in Indiana and has state tax	
31	liability; or	
32	(2) a corporation, a partnership, a limited liability company,	
33	a limited liability partnership, or other entity that:	
34	(A) is domiciled in Indiana;	
35	(B) is a small business; and	
36	(C) has state tax liability.	
37	Sec. 11.5. As used in this chapter, "recreational vehicle" has the	
38	meaning set forth in IC 9-13-2-150(a).	
39	Sec. 12. As used in this chapter, "small business" has the	
40	meaning set forth in IC 4-4-5.2-3.	
41	Sec. 13. As used in this chapter, "state tax liability" means a	
12	townsyon's total tax liability that is incurred under IC 6.2.1	



1	through IC 6-3-7 (the adjusted gross income tax) as computed after
2	the application of the credits that under IC 6-3.1-1-2 are to be
3	applied before the credit provided by this chapter.
4	Sec. 14. As used in this chapter, "tractor" has the meaning set
5	forth in IC 9-13-2-180.
6	Sec. 14.5. As used in this chapter, "truck camper" has the
7	meaning set forth in IC 6-6-5.1-8.
8	Sec. 15. A qualified taxpayer that makes a qualified investment
9	is entitled to a credit against the taxpayer's state tax liability for
10	the taxable year in which the qualified taxpayer makes the
11	qualified investment.
12	Sec. 16. Subject to section 17 of this chapter, the total amount of
13	a tax credit claimed for a taxable year under this chapter is equal
14	to:
15	(1) the number of qualified investments made by the qualified
16	taxpayer during that taxable year; multiplied by
17	(2) one thousand dollars (\$1,000).
18	Sec. 17. (a) The total amount of tax credits claimed by a
19	qualified taxpayer for a particular taxable year may not exceed the
20	qualified taxpayer's state tax liability for that taxable year.
21	(b) A qualified taxpayer may not carry forward any unused
22	credit.
23	(c) A qualified taxpayer is not entitled to any carryback or
24	refund of any unused credit.
25	Sec. 18. (a) If a pass through entity does not have state tax
26	liability against which the tax credit may be applied, a shareholder,
27	member, or partner of the pass through entity is entitled to a tax
28	credit equal to:
29	(1) the tax credit determined for the pass through entity for
30	the taxable year; multiplied by
31	(2) the percentage of the pass through entity's distributive
32	income to which the shareholder, member, or partner is
33	entitled.
34	(b) The credit provided under subsection (a) is in addition to a
35	tax credit to which a shareholder, partner, or member of a pass
36	through entity is otherwise entitled under this chapter. However,
37	a pass through entity and a shareholder, partner, or member of the
38	pass through entity may not claim a credit under this chapter for
39	the same qualified investment.
40	Sec. 19. To receive the credit provided by this chapter, a
41	taxpayer must claim the credit on the taxpayer's annual state tax

 $return\ or\ returns\ in\ the\ manner\ prescribed\ by\ the\ department.\ The$ 



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1	taxpayer shall submit to the department:
2	(1) a copy of the certificate issued to the qualified taxpayer
3	under section 21 of this chapter; and
4	(2) all other information that the department determines is
5	necessary for the calculation of the credit provided by this
6	chapter.
7	Sec. 20. The purchase of new construction equipment, a new
8	farm tractor, a new motor vehicle, a new tractor, a new
9	recreational vehicle, or a new truck camper is ineligible for a tax
10	credit under this chapter unless the new construction equipment,
11	farm tractor, motor vehicle, tractor, recreational vehicle, or truck
12	camper has been certified by the dealer selling the property as
13	having been made in America.
14	Sec. 21. (a) This subsection does not apply to a motor vehicle
15	that is subject to subsection (b). A dealer shall certify that a motor
16	vehicle, farm tractor, construction equipment, tractor, recreational
17	vehicle, or truck camper is made in America if the motor vehicle,
18	farm tractor, construction equipment, tractor, recreational vehicle,
19	or truck camper has been assembled in America.
20	(b) This subsection applies only to a motor vehicle that is a truck
21	having a gross declared weight of not more than eleven thousand
22	(11,000) pounds or a passenger motor vehicle (as defined by
23	IC 9-13-2-123). A dealer shall certify that a motor vehicle is made
24	in America if the motor vehicle satisfies either of the following:
25	(1) The motor vehicle is assembled in Indiana.
26	(2) The motor vehicle satisfies all of the following:
27	(A) The motor vehicle must be assembled in America.
28	(B) The engine of the motor vehicle must be assembled in
29	America.
30	(C) The transmission of the motor vehicle must be
31	assembled in America.
32	(D) At least seventy percent (70%) of the parts contained
33	in the motor vehicle must be made in America.
34	(c) The certifications required by this section must be made on
35	a form prescribed by the corporation and must be signed by the
36	dealer under penalty of perjury. The corporation shall make the
37	forms available on the web site maintained by the corporation. The
38	certification form must be made available so that an individual can
39	download the form for completion.
40	(d) A copy of the certification received under this section must
41	be submitted to the department under section 19 of this chapter for

each qualified investment for which the qualified taxpayer wishes



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1	to claim a tax credit under this chapter in a taxable year.	
2	Sec. 22. The following apply to any person who issues a	
3	certification described in section 21 of this chapter:	
4	(1) The person consents that the person (and any successor in	
5	interest of the person) will be subject to the jurisdiction of	
6	Indiana courts.	
7	(2) The person consents that service of process in accordance	
8	with the Indiana Rules of Trial Procedure is proper service	
9	and subjects the person (and any successor in interest of the	
10	person) to the jurisdiction of Indiana courts.	
11	(3) The person consents that any civil action related to the	
12	provisions of this chapter and in which the person (or any	
13	successor in interest of the person) is a party will be heard in	
14	an Indiana court.	
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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1397, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 8, after "equipment," insert "a".

Page 3, line 9, before "new motor" insert "a".

Page 3, line 9, delete "or" and insert "a".

Page 3, line 9, after "tractor" insert ", a new recreational vehicle, or a new truck camper".

Page 3, between lines 21 and 22, begin a new paragraph and insert: "Sec. 11.5. As used in this chapter, "recreational vehicle" has the meaning set forth in IC 9-13-2-150(a).".

Page 3, delete lines 24 through 31, begin a new paragraph and insert:

"Sec. 13. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax) as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter."

Page 3, between lines 33 and 34, begin a new paragraph and insert: "Sec. 14.5. As used in this chapter, "truck camper" has the meaning set forth in IC 6-6-5.1-8.".

Page 4, line 34, delete "or".

Page 4, line 34, after "new tractor" insert ", a new recreational vehicle, or a new truck camper".

Page 4, line 36, delete "or tractor" and insert "tractor, recreational vehicle, or truck camper".

Page 4, line 39, delete "or".

Page 4, line 39, after "a tractor" insert ", a recreational vehicle, or a truck camper".

Page 4, line 42, delete "or".

Page 4, line 42, after "tractor" insert ", recreational vehicle, or truck camper".

Page 5, line 2, delete "or".

Page 5, line 2, after "tractor" insert ", recreational vehicle, or truck camper".

Page 5, line 4, delete "or tractor" and insert "tractor, recreational vehicle, or truck camper".

Page 5, line 7, delete "or".

Page 5, line 8, after "tractor" insert ", recreational vehicle, or truck



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camper".

Page 5, line 11, delete "or".

Page 5, line 11, after "a tractor" insert ", a recreational vehicle, or a truck camper".

and when so amended that said bill do pass.

(Reference is to HB 1397 as introduced.)

SULLIVAN, Chair

Committee Vote: yeas 10, nays 0.

## HOUSE MOTION

Mr. Speaker: I move that House Bill 1397 be amended to read as follows:

Page 2, between lines 35 and 36, begin a new paragraph and insert:

"Sec. 5.5. As used in this chapter, "dealer" means a person who:

- (1) is engaged in the business of buying, selling, leasing, or exchanging property described in subdivision (2); and
- (2) sells, leases, or advertises the sale or lease of more than four (4):
  - (A) motor vehicles;
  - (B) pieces of construction equipment;
  - (C) farm tractors;
  - (D) tractors;
  - (E) recreational vehicles; or
  - (F) truck campers;

within a twelve (12) month period.".

Page 3, line 7, after "10." insert "(a)".

Page 3, line 13, delete "corporation" and insert "dealer selling the property".

Page 3, between lines 14 and 15, begin a new paragraph and insert:

"(b) The term does not include the purchase of any property described in subsection (a) for the purpose of resale.".

Page 4, line 31, delete "20(c)" and insert "21".

Page 4, line 35, delete "(a)".

Page 4, line 40, delete "corporation" and insert "dealer selling the property".

Page 4, delete line 42, begin a new paragraph and insert:

"Sec. 21. (a) This subsection does not apply to a motor vehicle that is subject to subsection (b). A dealer shall certify that a motor

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vehicle, farm tractor, construction equipment, tractor, recreational vehicle, or truck camper is made in America if the motor vehicle, farm tractor, construction equipment, tractor, recreational vehicle, or truck camper has been assembled in America.

- (b) This subsection applies only to a motor vehicle that is a truck having a gross declared weight of not more than eleven thousand (11,000) pounds or a passenger motor vehicle (as defined by IC 9-13-2-123). A dealer shall certify that a motor vehicle is made in America if the motor vehicle satisfies either of the following:
  - (1) The motor vehicle is assembled in Indiana.
  - (2) The motor vehicle satisfies all of the following:
    - (A) The motor vehicle must be assembled in America.
    - (B) The engine of the motor vehicle must be assembled in America.
    - (C) The transmission of the motor vehicle must be assembled in America.
    - (D) At least seventy percent (70%) of the parts contained in the motor vehicle must be made in America.
- (c) The certifications required by this section must be made on a form prescribed by the corporation and must be signed by the dealer under penalty of perjury. The corporation shall make the forms available on the web site maintained by the corporation. The certification form must be made available so that an individual can download the form for completion.
- (d) A copy of the certification received under this section must be submitted to the department under section 19 of this chapter for each qualified investment for which the qualified taxpayer wishes to claim a tax credit under this chapter in a taxable year.
- Sec. 22. The following apply to any person who issues a certification described in section 21 of this chapter:
  - (1) The person consents that the person (and any successor in interest of the person) will be subject to the jurisdiction of Indiana courts.
  - (2) The person consents that service of process in accordance with the Indiana Rules of Trial Procedure is proper service and subjects the person (and any successor in interest of the person) to the jurisdiction of Indiana courts.











(3) The person consents that any civil action related to the provisions of this chapter and in which the person (or any successor in interest of the person) is a party will be heard in an Indiana court.".

Delete page 5.

(Reference is to HB 1397 as printed February 6, 2009.)

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